

CHAPTER NO. 528

HOUSE BILL NO. 1645

By Representative McDaniel

Substituted for: Senate Bill No. 1759

By Senator Kurita

AN ACT to amend Tennessee Code Annotated, Title 63, relative to the "Occupational and Physical Therapy Practice Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 13, Part 1, is amended by deleting such part in its entirety and by substituting instead Sections 2 through 10 as new Part 1.

SECTION 2. This chapter shall be known and may be cited as the "Occupational and Physical Therapy Practice Act."

SECTION 3. This chapter is enacted for the purposes of protecting the public health, safety, and welfare and providing for state administrative control, supervision, licensure and regulation of the practice of physical therapy and occupational therapy. It is the legislature's intent that only individuals who meet and maintain prescribed standards of competence and conduct may engage in the practice of physical therapy and occupational therapy as authorized by this chapter. This chapter is intended to promote the public interest and to accomplish the purposes stated herein.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Board of Occupational and Physical Therapy Examiners;

(2) "Division" means the Division of Health Related Boards of the Department of Health;

(3) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this act;

(4) "Physical therapist" means a person who is licensed pursuant to this act to practice physical therapy;

(5) "Practice of physical therapy" means:

(A) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement-related conditions in order to determine a physical therapy treatment diagnosis, prognosis, a plan of therapeutic intervention, and to assess the ongoing effect of intervention;

(B) Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional training;

manual therapy; therapeutic massage; assistive and adaptive orthotic, prosthetic, protective and supportive equipment; airway clearance techniques; debridement and wound care, physical agents or modalities, mechanical and electrotherapeutic modalities; and patient-related instruction;

(C) Reducing the risk of injury, impairments, functional limitation and disability, including the promotions and maintenance of fitness, health and quality of life in all age populations;

(D) Engaging in administration, consultation, education and research;

(6) "Physical therapist assistant" means a person who meets the requirements of this act for licensure as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist;

(7) "Physical therapy assistive personnel":

(A) "Physical therapy aide", inclusive of the terms aide, technician and transporter, means a person trained by and under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks; and

(B) "Other assistive personnel" means other trained or educated health care personnel not defined in item (6) or (7)(A) above, who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, "other assistive personnel" or "other support personnel" may be identified by the title specific to their training or education;

(8) "Restricted physical therapy license" means a license on which the committee places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type of condition of patient to whom the licensee may provide services;

(9) "Restricted physical therapist assistant license" means a license on which the committee has placed any restrictions due to action imposed by the committee;

(10) "Supervision" of the physical therapist assistant means the supervising physical therapist will be readily available to the physical therapist assistant being supervised. When the physical therapist assistant is practicing in an offsite setting, the supervising physical therapist will be immediately accessible by telecommunications; patient conferences will be regularly scheduled and documented and supervisory visits will be made as further outlined in the rules and regulations; and

(11) "On-site supervision" means the supervising physical therapist or physical therapist assistant must:

(1) Be continuously on-site and present in the department or facility where assistive personnel are performing services;

(2) Be immediately available to assist the person being supervised in the services being performed; and

(3) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

SECTION 5. (a) The Board of Occupational and Physical Therapy Examiners shall consist of (9) members appointed by the Governor, each of whom shall be a resident of this State. The board shall consist of two (2) committees: a committee of occupational therapy and a committee of physical therapy.

(b)(1) Three (3) members of the board shall be occupational therapists who have had at least five (5) years' experience in the actual practice of teaching of occupational therapy immediately preceding their appointment. One (1) member of the board shall be a certified occupational therapy assistant who has had at least five (5) years experience in the actual practice or teaching in an occupational therapy assistant curriculum immediately preceding the appointment. The Tennessee Occupational Therapy Association may supply a list to the Governor of at least (3) nominees for each appointment or vacancy to be filled pursuant to subdivision (b)(1). The Governor may make the appointment from such list.

(2) Three (3) members of the board shall be licensed physical therapists who have had at least (5) years' experience in the actual practice or teaching of physical therapy immediately preceding their appointment. One (1) member of the board shall be a physical therapist assistant who has had at least (5) year's experience in the actual performance of physical therapy procedures and related tasks or teaching of physical therapist assistant curriculum immediately preceding the appointment. The Tennessee Physical Therapy Association may supply a list to the Governor of at least (3) nominees for each appointment or vacancy to be filled pursuant to this subdivision. The Governor may make the appointment from such list.

(3) One (1) member of the board shall be a person who is not engaged in the practice of occupational therapy or physical therapy and who is not professionally or commercially associated with the health care industry. Occupational therapists and physical therapists serving on the board may supply a list of at least three (3) nominees for each appointment or vacancy to be filled pursuant to this subdivision; provided, that each of the nominees identified on such list enjoys the unanimous endorsement of such occupational therapists and physical therapists. The Governor may make the appointment from such list.

SECTION 6. (a) Board members appointed pursuant to subdivisions (b)(1) and (3) shall serve on the committee of occupational therapy. Board members appointed pursuant to subdivision (b)(2) and (3) shall serve on the committee of physical therapy. A quorum of either such committee shall consist of at least three (3) members.

(b) The board shall organize annually and select a chairman and a secretary. A quorum of the board shall consist of not less than five (5) members; of whom two (2) shall be physical therapists and two (2) shall be occupational therapists. Meeting of the board shall be held as frequently as its duties may require.

SECTION 7. (a) The Division of Health Related Boards as defined in Section 63-1-101 shall be the administrative agency for the board.

(b) Each member shall be reimbursed for actual expenses incurred in the performance of official duties on the board and, in addition thereto, shall be entitled to a

per diem of fifty dollars (\$50.00) for each day's services in conducting the business of the board. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter.

SECTION 8. (a) All regular appointments shall be for terms of three (3) years each. In making appointments to the board, the Governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older, that at least one (1) person serving on the board is a member of a racial minority, and that the gender balance of the board reflects the gender balance of the State's population.

(b) Each member shall serve on the board until a successor is appointed.

(c) Vacancies shall be filled by appointment of the Governor for the unexpired term.

(d) The Governor may, at the request of the board, remove any member of the board for misconduct, incompetence or neglect of duty.

SECTION 9. In addition to the powers granted elsewhere in the chapter, the board has the following duties:

(1) To promulgate, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, all rules that are reasonably necessary for the performance of its duties and the proper administration of this chapter. All rules which relate exclusively to schools of physical therapy, to physical therapists or to physical therapist assistants shall be initiated and adopted by a majority of the members of the committee of physical therapy and all rules which relate exclusively to schools of occupational therapy, to occupational therapists or to occupational therapy assistants shall be initiated and adopted by a majority of the members of the committee of occupational therapy. Subject to the limitations contained herein, all rule making authority delegated by this chapter shall be vested in the board.

(2) Within the maximum limitations established elsewhere in this chapter, fees relating to physical therapy shall be set in an amount sufficient to pay all of the expenses of the committee of physical therapy as well as fifty percent (50%) of the board's general expenses, and fees relating to occupational therapy shall be set in an amount sufficient to pay all of the expenses of the committee of occupational therapy as well as fifty (50%) of the board's general expenses

(3) To grant, under the board's name, the licenses issued by the committee of occupational therapy or the committee of physical therapy.

(4) To collect or receive all fees, fines and monies owed pursuant to the provisions of this chapter and to pay the same into the general fund of the State. For purposes of implementing subdivision (2), the board shall designate any such fee, fine or monies as having originated from the regulation of physical therapy or from the regulation of occupational therapy.

SECTION 10.

(a) Nothing in this definition shall be construed as allowing physical therapists to practice medicine, osteopathy, podiatry, chiropractic, or nursing.

(b) The scope of practice of physical therapy shall be under the written or oral referral of a licensed doctor of medicine, chiropractic, dentistry, podiatry or osteopathy, with exceptions as stated in 63-13-301.

SECTION 11. Tennessee Code Annotated, Title 63, Chapter 13, Part 3, is amended by deleting such part in its entirety and by substituting instead Sections 12 through 29 as new Part 3.

SECTION 12. (a) A physical therapist licensed under this act is fully authorized to practice physical therapy as defined herein.

(b) No person shall practice, or in any manner hold himself or herself out to be engaging in the practice of physical therapy or designate himself or herself as a physical therapist unless duly licensed as a physical therapist in accordance with this chapter.

SECTION 13. (a) A physical therapist shall refer persons under his or her care to appropriate health care practitioners, after consultation with the referring practitioner, if the physical therapist has reasonable cause to believe symptoms or conditions are present which require services beyond the scope of practice or when physical therapy treatment is contraindicated.

(b) Physical therapists shall adhere to the recognized standards of ethics of the physical therapy profession and as further established by rule.

SECTION 14. The practice of physical therapy shall be under the written or oral referral of a licensed doctor of medicine, chiropractic, dentistry, podiatry or osteopathy, except for the following:

(1) The initial evaluation which may be conducted without such referral;

(2) A licensed physical therapist may treat a patient for an injury or condition that was the subject of a prior referral if all of the following conditions are met:

(A) The physical therapist, within four (4) business days of the commencement of therapy, consults with the referring licensed physician, osteopathic physician, dentist, chiropractor, podiatrist, or other referring practitioner;

(B) For all episodes of physical therapy subsequent to that which was initiated by the referral, the physical therapist treats the patient for not more than ten (10) treatment sessions or fifteen (15) consecutive calendar days, whichever occurs first, whereupon the physical therapist must confer with the referring practitioner in order to continue the current episode of treatment; and

(C) The physical therapist commences any episode of treatment provided pursuant to this subsection within one (1) year of the referral by the referring practitioner.

(3) No physical therapist may provide treatment pursuant to subdivision two (2) of this section without having been licensed to practice physical therapy for at least one (1) year and without satisfying other requirements set by the committee.

(4) A licensed physical therapist may provide physical assessments or instructions including recommendation of exercise to an asymptomatic person without the referral of a referring practitioner.

(5) In emergency circumstances, including minor emergencies, a licensed physical therapist may provide assistance to a person to the best of a therapist's ability without the referral of a referring practitioner. Provided, the physical therapist shall refer to the appropriate health care practitioner, as indicated, immediately thereafter. For the purposes of this subsection, emergency circumstances means instances where emergency medical care is called for. Emergency medical care means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

SECTION 15. The committee of physical therapy shall have the power and authority to:

(1) Evaluate the qualifications of applicants for licensure and provide for the examination for physical therapists and physical therapist assistants;

(2) Adopt passing scores for examination;

(3) Issue licenses to those who qualify under this act;

(4) Regulate the practice of physical therapy by interpreting and enforcing the provisions of this statute, including disciplinary action;

(5) Adopt and revise rules, as it deems necessary and appropriate, consistent with this law, for the discharge of its obligation under this section. Such rules, when lawfully adopted, shall have the effect of law;

(6) Establish requirements for assessing continuing competence of licensees; and

(7) Assess all license and registration fees.

SECTION 16. (a) Nothing in this chapter shall be construed as restricting a person licensed or certified under any other law of this State from engaging in the profession or practice for which the person is licensed or certified, provided, that the person does not represent himself or herself to be a physical therapist, a physical therapist assistant or a provider of physical therapy.

(b) The following persons shall be exempt from licensure as a physical therapist or physical therapist assistant under this chapter:

(1) A person who is pursuing a course of study leading to a degree as a physical therapist or physical therapist assistant in a professional education program approved by the committee and is satisfying supervised clinical education requirements related to physical therapy education.

(2) A physical therapist or physical therapist assistant while practicing in the United States Armed Services, United States Public Health Service or Veterans Administration as based on requirements under federal regulations for state licensure of health care providers.

(3) A physical therapist or physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty (60) days in a calendar year.

(c) Nothing in this chapter shall be construed as restricting persons licensed under any other law of this State from performing physical agent modalities for which they have received education and training.

SECTION 17. (a) An applicant for licensure as a physical therapist or physical therapist assistant shall file an application as required by the committee. A non-refundable application fee and the cost of the examination shall accompany the completed written application. Fees shall be established by the rules promulgated by the board.

(b) After the application process has been completed, an applicant shall take the examination for physical therapist licensure which covers current physical therapy practice.

(c) After the application process has been completed, an applicant shall take the examination for physical therapist assistant licensure which covers current technical application of physical therapy services.

(d) Examinations shall be available within the State at such time and place as the committee shall determine. The committee shall determine the passing score.

(e) Applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without re-application for licensure. This must occur within six (6) months of initial committee approval to take the exam. Prior to being approved by the committee for subsequent testing beyond two (2) attempts, individuals shall submit a new application with all applicable fees and demonstrate evidence satisfactory to the committee of having successfully completed additional clinical training and/or course work as determined by the committee and defined in the rules.

SECTION 18.

(a) An applicant for licensure as a physical therapist shall have the following qualifications:

(1) Must be at least eighteen (18) years of age;

(2) Be of good moral character;

(3) Have completed the application process;

(4) Be a graduate of a professional physical therapy education program accredited by an accreditation agency approved by the committee; and

(5) Have successfully passed an examination approved by the committee;

(b) An applicant for license as a physical therapist assistant shall meet the following requirements:

(1) Must be at least (18) years of age;

(2) Be of good moral character;

(3) Have completed the application process;

(4) Be a graduate of a physical therapist assistant education program accredited by an accreditation agency approved by the committee; and

(5) Have successfully passed an examination approved by the committee

(c) The board shall issue a license to a physical therapist or physical therapist assistant who has a valid unrestricted license from another United States jurisdiction in which he or she, when granted such license, previously met all requirements as specified in subsections (a) and (b), and as further established by rules promulgated by the board.

(d) An applicant for licensure as a physical therapist who has been educated outside the United States shall meet the following qualifications:

(1) Must be at least eighteen (18) years of age;

(2) Be of good moral character;

(3) Have completed the application process;

(4) Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the committee. If the committee determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;

(5) Provide written proof that the school of physical therapy education is recognized by its own ministry of education;

(6) Provide written proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;

(7) Provide proof of legal authorization to reside and seek employment in the United States or its territories;

(8) Have the applicant's educational credentials evaluated by a committee -approved credential evaluation agency;

(9) Have passed the committee approved English proficiency examinations, if his or her native language is not English;

(10) Have participated in and completed an interim supervised clinical practice period prior to licensure; and

(11) Have successfully passed the examination approved by the committee.

(e) Notwithstanding the provisions of this section, if the foreign-educated physical therapist applicant is a graduate of a professional physical therapy education program accredited by an agency approved by the committee, requirements in subdivisions (d)(4), (d)(5), (d)(8), and (d)(10) may be waived.

(f) In determining the qualifications of applicants for licensure as a physical therapist or as a physical therapist assistant, only a majority vote of the committee of physical therapy shall be required.

SECTION 19.

(a) A physical therapist or physical therapist assistant licensed under the provisions of this statute shall renew his or her license as specified in the rules. An individual, who fails to renew his or her license by the date of expiration, shall not practice physical therapy or function as a physical therapist assistant in the State of Tennessee.

(b) Each licensee shall report to the division a name change and changes in business and home address within thirty (30) days of the change

(c) Any person licensed by the committee to practice in this State, who has retired or may retire from such practice in this State, is not required to register as required by this part, if such person files with the committee an affidavit on a form to be furnished by the committee, which affidavit states the date on which the person retired from such practice and any other facts, as the committee considers necessary, that tends to verify such retirement. If such person thereafter reengages in practice in this State, such person shall apply for licensure with the committee as provided by this part, and shall meet such continuing education requirements that are established by the committee, except for good and sufficient reasons as determined by the committee.

(d) Any person licensed by the committee may place the license on inactive status by filing the proper forms with the committee, and by paying a biennial fee in accordance with rules. If such person thereafter reengages in active practice in this State, such person shall apply for relicensure with the committee as provided by this part, and shall meet such continuing education requirements as are established by the committee, except for good and sufficient reasons as determined by the committee.

SECTION 20.

(a) Reinstatement of a lapsed license following a renewal deadline requires payment of a renewal fee, a late renewal penalty fee and a reinstatement fee, in accordance with rules promulgated by the board.

(b) Reinstatement of a license which has lapsed for more than three (3) consecutive years requires reapplying for a license and payment of fees in

accordance with rules. The individual shall successfully demonstrate to the committee competency in the practice of physical therapy or shall serve an internship under a restricted license or take remedial courses as determined by the committee, or any combination of the preceding, at the committee's discretion. The committee may also require the applicant to take an examination.

(c) When any license holder fails to renew and pay the biennial renewal fee within sixty (60) days after renewal becomes due, as provided in this section, the license of such person shall be administratively revoked at the expiration of the sixty (60) days after the renewal was required, without further notice or hearing. Any person whose license is administratively revoked, as provided herein, may make application in writing to the committee for the reinstatement of such license and, upon good cause being shown, the committee, in its discretion, may reinstate such license upon payment of all required fees.

SECTION 21.

(a) A physical therapist shall use the letters "PT" in connection with his or her name or place of business to denote licensure under this act.

(b) It is unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with his or her name, or the name or activity of the business, the words, "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," "licensed physical therapist," or the letters "PT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless such services are provided by or under the direction of a physical therapist licensed in accordance with this act.

(c) Nothing in this chapter shall be construed as restricting a person licensed or certified under any other law of this State from engaging in the profession or practice for which the person is licensed or certified, provided, that the person does not represent himself or herself to be a physical therapist, a physical therapist assistant or a provider of physical therapy.

(d) A physical therapist assistant shall use the letters "PTA" in connection with his or her name to denote licensure hereunder.

(e) No person shall use the title "physical therapist assistant" and use the letters "PTA" in connection with his or her name, or any other words, abbreviations or insignia indicating or implying directly or indirectly that he or she is a physical therapist assistant unless he or she is licensed as a physical therapist assistant in accordance with this act.

SECTION 22.

(a) Physical therapists are responsible for the patient care given by physical therapist assistants, assistive personnel, and students on clinical affiliations under their supervision. The physical therapist may delegate to the physical therapist assistant, assistive personnel, and clinical students selected acts, tasks or procedures which fall within the scope of their education or training.

(b) Physical therapist assistants shall at all times be under the supervision of a licensed physical therapist as defined in §63-13-103 (10) and as further set forth in the rules promulgated by the board.

(c) Physical therapy aides, other assistive personnel, and clinical students shall at all times perform patient care activities under the on-site supervision of a licensed physical therapist or physical therapist assistant as defined in §63-13-103 (11).

(d) Physical therapist students and physical therapist assistant students shall at all times be under the supervision of a physical therapist as further set forth in the rules promulgated by the board.

SECTION 23.

The committee has the power, and it shall be its duty, to deny, suspend, revoke the license of, or to otherwise lawfully discipline, a licensee who is guilty of violating any of the provisions of this part or is guilty of the following acts or offenses:

(1) Practicing physical therapy in violation of the provisions of this chapter or any rule or written order adopted by the committee.

(2) Practicing or offering to practice beyond the scope of physical therapy practice as defined in this chapter.

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the licensee's practice.

(4) Engaging in the performance of substandard care by a physical therapist due to ignorance, incompetence, or a deliberate or negligent act or failure to act regardless of whether actual injury to the patient is established.

(5) Engaging in the performance of substandard care by a physical therapist assistant, which includes exceeding the authority to perform task selected and delegated by the supervising physical therapist regardless of whether actual injury to the patient is established.

(6) Inadequately supervising or delegating duties which exceed the scope of practice for assistive personnel in accordance with the chapter and rules adopted by the committee.

(7) Conviction of a felony or any offense involving moral turpitude in the courts of this State or any other state, territory or country. Conviction, as used in the paragraph, shall include a finding or verdict of guilt, or a plea of nolo contendere.

(8) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances, other habit forming drugs, chemicals or alcohol.

(9) Disciplinary action against a person licensed to practice as a physical therapist or physical therapist assistant by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this State. A certified copy of the initial or final order or other equivalent document shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this State.

(10) Engaging in sexual misconduct. Sexual misconduct, for the purpose of this section, includes the following:

(A) Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient relationship exists;

(B) Making sexual advances, requesting sexual favors, and engaging in other verbal conduct or physical conduct or physical contact of a sexual nature with patients; and

(C) Intentionally viewing a completely or partially disrobed patient in the course of treatment, if the viewing is not related to patient diagnosis or treatment under current practice standards.

(11) Directly or indirectly requesting, receiving, or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services. Nothing in this item prohibits the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense.

(12) Failing to adhere to standards of ethics of the physical therapy profession.

(13) Charging unreasonable or fraudulent fees for services performed or not performed.

(14) Making misleading, deceptive, untrue or fraudulent representations in violation of this act, or otherwise, in practice of the profession.

(15) Being under a current judgment of mental incompetency rendered by a court of competent jurisdiction.

(16) Aiding or abetting a person not licensed in this State who directly or indirectly performs activities requiring a license.

(17) Failing to report to the committee any act or omission of a licensee, applicant, or any other person, which violates the provisions of this chapter.

(18) Interfering with, or refusing to cooperate in, an investigation or disciplinary proceeding, including willful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any legal action.

(19) Failing to maintain patient confidentiality without prior written consent or unless otherwise required by law.

(20) Failing to maintain adequate patient records that contain a minimum of an evaluation of objective finding, a physical therapy treatment diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention, and sufficient information to identify the patient.

(21) Promoting unnecessary devices, treatment intervention or service for the financial gain of the practitioner or of a third party.

(22) Providing treatment intervention unwarranted by the condition of the patient, nor shall they continue treatment beyond the point of reasonable benefit

(23) A violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate, any provisions or this chapter or any lawful order of the committee issued pursuant thereto, or any criminal statute of the State of Tennessee.

(24) Division of fees or agreeing to split fees or divide fees received for professional services with any person for bringing or referring a patient, outside the scope of §63-13-315.

(25) Payment or acceptance of commissions, in any form or manner, on fees for professional services, references, consultations, pathological reports, prescriptions, or on other services or articles supplied to patients.

SECTION 25. The committee may, upon proof of the violation of any provision of this chapter, take the following disciplinary actions singly or in combination:

(1) Deny an application for a license to any applicant who applies for the same through reciprocity or otherwise;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend or limit or restrict a previously issued license for such time and in such manner as the committee may determine;

(4) Issue a letter of reprimand;

(5) Reprimand or take such action in relation to disciplining an applicant or licensee, including, but not limited to, informal settlements and letters of warning as the committee, in its discretion, may deem proper;

(6) Revoke a license;

(7) Refuse to issue or renew a license; or

(8) Impose civil penalties for violation of this chapter pursuant to §63-1-134. In addition, the committee may, in its discretion, assess and collect the reasonable costs incurred in a disciplinary hearing, when action is taken against a person's license.

SECTION 26. (a) All proceedings for disciplinary action against a licensee shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) The committee retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section.

SECTION 27. (a) A person commits a Class B misdemeanor if the person engages in an activity requiring a license issue according to this chapter and who fails to obtain the required license, who violates any other provision of this chapter or who uses

any word, title, or representation implying that the person is licensed to engage in the practice of physical therapy. A person represents himself or herself to be a physical therapist when using a title, letters, or any description or services which incorporates one or more of the terms, designations or abbreviations specifically restricted under §§63-13-103 and 63-13-308.

(b) The board may authorize an investigation of any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy.

(c) The board may through the office of the Attorney General, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing an act in violation of this chapter. Injunctive proceedings are in addition to, and not in lieu of, all penalties, and other remedies prescribed in this chapter.

(d) A person who aids or requires another person to directly or indirectly violate this chapter or rules, who permits their license or a license issued by this board to be used by any person other than the licensee, or who acts with the intent to violate or evade this chapter or rules is subject to a civil penalty of not more than one thousand dollars (\$1000) for each violation.

SECTION 28. (a). In lieu of a disciplinary proceeding as set forth in this chapter, the committee may permit a licensee pursuant to this act to actively participate in a committee approved peer assistance program under the following conditions:

(1) The committee has evidence that the licensee is impaired.

(2) The licensee has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country.

(3) The licensee enters into a written agreement with the committee for a restricted license and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on the licensee's practice imposed by the committee to protect the public. Failure to enter into such an agreement shall activate an immediate investigation and disciplinary proceeding by the committee.

(4) As part of the agreement established between the licensee and the committee, the licensee shall sign a waiver allowing the peer assistance program to release information to the committee if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

(b) The committee shall establish fees for all licensees to effect the purposes of this act.

SECTION 29.

(a) Physical therapists shall inform the patient of any financial arrangements connected to the referral process.

(b) Physical therapists shall disclose in writing any financial interest in products they endorse and recommend to their patients.

(c) The licensee has the responsibility to ensure that the patient has knowledge of freedom of choice in services and products.

(d) Information relating to the physical therapist-patient relationship is confidential and may not be communicated to a third party not involved in that patient's care without the prior written consent of the patient. The physical therapist-patient confidentiality does not extend to cases in which the physical therapist has a duty to report information as required by law.

(e) Any person may submit a complaint regarding any licensee or any other person potentially in violation of this chapter. Confidentiality shall be maintained subject to law.

(f) The department shall keep all information relating to the receiving and investigation of complaints filed against licensees confidential until the information becomes public record as required by law.

(g) Each licensee shall display a copy of his or her license or current renewal verification in a location accessible to public view at his or her place of employment.

SECTION 30. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 26, 1999


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 21st day of June 1999


DON SUNDQUIST, GOVERNOR